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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/181,533 10/28/98 SHENNIB

A ISM/003

EXAMINER

WM02/0523

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SCOTTSDALE AZ 85267-2995

TRAN, S

ART UNIT

PAPER NUMBER

2643

DATE MAILED:

05/23/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/181,533

Applicant(s)

SHENNIB, ADNAN

Examiner

Sinh Tran

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) 26-32 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claims ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 18) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

I. During a telephone conversation with Mr. Greene on May 17, 2001 a provisional election was made with traverse to prosecute the invention of I, claims 1-25. Affirmation of this election must be made by applicant in replying to this Office action. Claims 26-32 withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

2. Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-25, drawn to a hearing aid using a latchable magnetic switch, classified in class 381, subclass 315.
- II. Claims 26-32, drawn to a latchable magnetic switch, classified in class 335, subclass 151.

The inventions are distinct, each from the other because of the following reasons:
Inventions I and II are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because hearing aids use many kind of switches to activate/deactivate, programming or

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change parameters including the use of RF, infrared radiation, ultrasonic switches and etc . The subcombination has separate utility such as reed switch for electrical toys.

1. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

2. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 3, 6-17 and 20-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Newton (5,553,152) in view of Grad (5,811,896).

Regarding claims 1, 3, 6-7, 9-12, 14-20 and 23-25, Newton discloses a hearing device comprising electrical circuit (22) and a magnetically controlled reed switch (34)

connected to electrical circuit as claimed. Newton fails to disclose the reed switch is of the type as claimed in lines 9-17.

Grad teaches such a controlled reed switch (Figs. 3-3B) comprising a first and second reeds (19, 19A); respective lead wires (16, 16A); and a latching magnet directly affixed to the lead wire where the magnet has a magnetic field of sufficient strength to maintain the first and second reeds together after the air gap is closed but insufficient strength to bring the reeds together while the air gap exists (see abstract, second and third paragraphs). Grad further teaches that the switch in Figs. 3-3B is an improved over the well known reed switches where when a magnetic field is applied to the switches they close and will open again when the magnetic field is removed. Thus eliminate the need for holding the magnetic field near the switch for a specified time segment (see col. 1, lines 10-18).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use the reed switch as taught by Grad in place of the reed switch of Newton for the purpose of having a latchable reed switch, thus eliminating the need to have to hold the magnetic field near the switch for a period of time.

Regarding claim 8, the combination of Newton in view of Grad discloses a control magnet and means to prevent insertion (30 and 26 in Newton).

Regarding claim 13, the combination fails to disclose that the latching magnet has a protective coating. The examiner takes the Office Notice that it is well known in the art to have magnets with protective coatings. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the latching

magnet of the combination with protective coating since it is well known in the art and for the purpose of protecting the magnet.

Regarding claim 21, the combination fails to disclose that the switch is applied for removing battery power to the hearing device. However Grad teaches the use of the switch to apply battery power to a load. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to apply Grad's teaching of on/off feature to the combination for the purpose adding additional feature of remotely activating/deactivating the hearing aid.

Regarding claim 22, the combination fails to disclose a stopper to prevent the control magnet from the entering the canal. The examiner takes the Office Notice that it is well known in the art to provide flanges or stoppers to hearing aid housings to prevent deep insertion in the ear canals. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide some kind of stopper such as a flange to the control magnet of the combination for the same purpose which is to prevent the device from entering the ear canal.

3. Claims 2, 4-5 and 18-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Newton in view of Grad as applied to claims 1 and 3 above, and further in view of Posey (5,293,523, cited by the applicant).

The combination of Newton in view of Grad fails to disclose that the latching magnet is directly affixed to the first reed, the lead wire or wedged between the lead wires. Posey

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teaches a latching magnet mounted on a reed or any varying distances therefrom or any varying positions along the reed (see col. 5, first paragraph). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to place the latching magnet of the combination on the reed, on the lead wire, wedge between the wires or at any varying distances therefrom as taught by Posey for so as long as the location is within the magnet sensitivity.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sinh Tran whose telephone number is (703) 305-4040. The examiner can normally be reached on M-F 7:00AM-3:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Curtis Kuntz can be reached on (703) 305-4708. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-9051 for regular communications and (703) 308-9051 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-4700.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks
Washington, D.C. 20231

or faxed to:

(703) 308-6306, (for formal communications intended for entry)

or:

(703) 308-6296, (for informal or draft communications, please label "PROPOSED" or "DRAFT")

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Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA., Sixth Floor
(Receptionist).



Sinh Tran
Primary Examiner
Art Unit 2643

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May 18, 2001